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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
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10 Jennifer L. Matthews,

11 Plaintiff,

12 vs.

13 Michael J. Astrue, Commissioner of
14 Social Security,

15 Defendant.
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No. CIV 11-290-TUC-LAB

ORDER

17 Pending before the court is the plaintiff's counsel's motion for attorney's fees pursuant
18 to 42 U.S.C. § 406(b), filed on March 18, 2013. (Doc. 41)

19 The plaintiff filed this action for review of the final decision of the Commissioner for
20 Social Security pursuant to 42 U.S.C. § 405(g). In an order issued on July 12, 2012, this court
21 reversed the Commissioner's final decision and remanded the case for payment of benefits. On
22 February 11, 2013, this court granted the plaintiff's motion for attorney's fees in the amount of
23 \$5,001.20 pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). (Doc. 40)
24 In the pending motion, the plaintiff's counsel moves for an order allowing him 25 percent of the
25 claimant's past-due benefit award pursuant to their contingent-fee agreement, less the amount
26 already awarded under the EAJA. Neither the claimant nor the Commissioner filed a response
27 to the motion.
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1 Magistrate Judge Leslie A. Bowman presides over this action pursuant to 28 U.S.C. §
2 636(c). (Doc. 19)

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4 Discussion

5 In *Gisbrecht v. Barnhart*, 535 U.S. 789, 122 S.Ct. 1817 (2002), the Supreme Court
6 considered the interplay between social security contingent-fee agreements and the dictates of
7 42 U.S.C.A. § 406(b)(1)(A), which reads in pertinent part as follows:

8 Whenever a court renders a judgment favorable to a claimant under this
9 subchapter who was represented before the court by an attorney, the court may
10 determine and allow as part of its judgment a reasonable fee for such
11 representation, not in excess of 25 percent of the total of the past-due benefits to
12 which the claimant is entitled by reason of such judgment

13 42 U.S.C.A. § 406(b)(1)(A).

14 The Court held “that § 406(b) does not displace contingent-fee agreements.” *Id.* at 808,
15 1829. “[I]nstead, §406(b) instructs courts to review for reasonableness fees yielded by those
16 agreements.” *Id.* at 809, 1829.

17 When considering a fee request, the court should start with the agreement and then test
18 it for reasonableness. *Id.* at 808, 1828. Recovery may be reduced because of the quality of the
19 representation, because of unreasonable delay, or because “the benefits are large in comparison
20 to the amount of time counsel spent on the case.” *Id.*

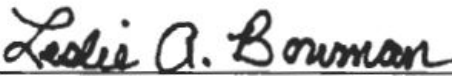
21 In the pending motion, counsel moves for an award of \$20,401.50, which is 25% of the
22 claimant’s past-due benefits in accordance with the contingent-fee agreement. (Doc. 41) He
23 asserts he and his paralegal spent 28.6 hours on the case resulting an effective hourly rate of
24 \$713.34. (Doc. 41, p. 6)

25 Upon review of the case file, the court finds that counsel’s prosecution of this action fell
26 within the broad range of competent representation. The court finds no reason to reduce the
27 award based on the quality of the representation. Neither did counsel engage in unreasonable
28 delay. The court is concerned by the size of the award in relation to the number of hours spent.
The Ninth Circuit, however, has approved effective hourly rates of \$519, \$875, and \$902

1 without finding that they are unreasonable. *See Crawford v. Astrue*, 586 F.3d 1142, 1153 (9th
2 Cir. 2009) (Clifton, J., concurring in part and dissenting in part). Accordingly,

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4 IT IS ORDERED that the motion for attorney's fees pursuant to 42 U.S.C. § 406(b), filed
5 on March 18, 2013, is GRANTED. (Doc. 41) Counsel is awarded \$20,401.50 less the
6 \$5,001.20 previously awarded under the Equal Access to Justice Act (EAJA) resulting in a net
7 award of \$15,400.30.

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9 DATED this 22nd day of August, 2013.

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13 Leslie A. Bowman
14 United States Magistrate Judge
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